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Chair

Ms. Julie Dabrusin

Standing Committee on Canadian Heritage

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● (0845)

[*English*]

The Chair (Ms. Julie Dabrusin (Toronto—Danforth, Lib.)): Welcome, everyone, to the 111th meeting of the Standing Committee on Canadian Heritage. We are today continuing with our study of remuneration models for artists and creative industries.

We have with us in the room Graham Henderson, from Music Canada;

[*Translation*]

Mr. Dominic Trudel, from the Conseil québécois de la musique, who is joining us by videoconference

[*English*]

and we are waiting for our two witnesses from The Jerry Cans. We'll get started and hopefully they can join us.

[*Translation*]

It would probably be better to start with Mr. Trudel, given that we sometimes have technical problems with videoconferences.

Mr. Trudel, you may start your presentation.

Mr. Dominic Trudel (Chief Executive Officer, Conseil québécois de la musique): Good morning. Thank you very much for inviting me to participate in this meeting. I am the Chief Executive Officer of the Conseil québécois de la musique, the CQM. Our organization is made up of professional concert musicians, that is, those who play classical, jazz, contemporary and world music, which distinguishes us from those who play popular music.

My presentation is mainly based on a document commissioned by the CQM, and written by Guillaume Sirois, an independent researcher in Montreal. We asked him to write a literature review, titled *Le développement de contenus numériques dans le domaine de la musique de concert*. My presentation will consist in me reading you excerpts from this document.

Of all the arts, music has probably been the one most deeply and quickly affected by the arrival of digital technologies. Right from the early 2000s, the music industry began a cycle of changes that continued through a succession of new technological innovations. Peer-to-peer file sharing, online music piracy, the arrival of legal download sites, and, finally, music streaming platforms have all, in turn, caused great turmoil in an industry that is continually striving to adapt to the many technological changes in order to maintain its production abilities and its vitality.

The digital shift has come with many promises over the years. We were told, for instance, that it would cut out the middleman from the production and distribution chain, and establish a direct link between creators and their fans. Others believed that we would witness a kind of golden age for revenue from stage performances, and that, in terms of sales, these performances would replace sound recordings as industry drivers. From this perspective, sound recordings would be reduced to a type of loss leader to boost concert ticket sales. For the majority of artists in the music industry, all of these promises made by the digital revolutionaries have fallen flat. A number of these artists still struggle to convert digital opportunities into significant revenue.

All of these problems of introducing digital technologies into the world of music are largely studied from the perspective of popular music. However, a certain number of specific problems arise in the field of concert music.

As the voice for this field, the Conseil québécois de la musique is particularly concerned with all of these problems, because they directly affect all of our members.

Though musicians view enforcing copyright and collecting royalties as key issues in the digital era, they are also deeply affected by the digital revolution in terms of their ability to produce, distribute and promote their music. Therefore, throughout the creative process, creators have seen a change in how they are compensated.

The impacts of these technologies on music consumption habits are changing rapidly, as new options become available to consumers. Sound recording sales are going down, streaming revenue is going up, but musicians are getting hardly any of it, and concert ticket sales revenue is not compensating for lost music sales revenue. The market is highly globalized, with music travelling quickly between America and Europe, and increasingly towards Asia, where the demand for cultural products is soaring.

The new music platforms are almost exclusively developed for popular music, and are sometimes ill-adapted to the realities of classical music. A good example of this is how hard it is to correctly identify the composers, performers and various elements of any given classical music recording. Also, it is hard for these systems to appropriately process pieces with a number of movements—generally recorded on different tracks—specifically when they create playlists, suggested or otherwise. It is hard to correctly catalogue composers and performers, as their names are sometimes spelled differently from one recording to the next. Furthermore, there is insufficient knowledge of classical music's different genres, eras and currents; the platforms process it as one homogenous whole.

I'll add that the remuneration models of these streaming websites, generally speaking, put classical musicians at a disadvantage. These sites generally pay artists a minuscule fixed sum, fractions of a penny, every time a piece is played. The model is based on the number of plays of the same piece, which can generate revenue for musicians in the long run. However, since classical pieces are, on average, much longer than pop songs, the same listening time can generate very different revenue depending on what kind of music is played.

Following this logic, a classical music fan and a popular music fan, both spending an hour listening to their favourite music on one of these sites, would generate different royalties. The first, having listened to a more limited number of pieces, would generate fewer royalty payments, whereas the second, having had the time to consume a larger number of pieces, would generate a higher number of royalty payments.

● (0850)

Furthermore, since classical music audiences are still far smaller than popular music ones, streaming platforms only generate very little revenue with classical music, for now. Ironically, it often takes more musicians to create these pieces.

In this type of market where revenue is generally going down, it becomes harder and harder to finance content production of concert music. Yet, musicians and orchestras are increasingly feeling the need to have their performances heard online, because it is becoming an essential aspect of any form of career progression in this field.

With this in mind, Radio-Canada's decision, taken three years ago, to significantly cut back on the number of concerts it records has only added to the challenges faced by Quebec musicians in producing quality digital content and promoting it to audiences interested in this type of production.

The development of affordable digital technologies that provide increasingly higher quality recordings has somewhat democratized the production of digital concert music content. However, a number of artists also point out that the explosion of digital technologies in the arts has caused certain difficulties for them, specifically in terms of identifying the technologies that meet their needs, and the opportunities these tools provide.

Nevertheless, artists who wish to produce content for the digital world now have a range of possibilities. They can go with the traditional model, where record labels take charge of every step of the production and marketing process, but, more and more of them are now choosing self-production instead, and are even signing risk-sharing contracts with production companies.

This reconfiguration of the production and distribution chain for digital content also raises some important questions about state funding for these types of activities. Until now, all state funding for producing content went directly to the producers, who were the only ones able to provide this service. However, what do we do now that production has become much less centralized, and can be done by many different people? Given that traditional producers are losing ground, that artists now feel more pressure to be their own producers, that a higher number of artists are now doing just that, do we not need to review how state funding is channelled to support this industry?

For concert musicians, producing digital content goes hand in hand with broadcasting and distributing it.

We need to take into account the culture of free access that dominates the digital content market. It is increasingly harder to develop business models that require consumers to pay for cultural content. This is particularly true with emerging art forms. Hugely famous artists and producers can easily count on consumers to pay a certain amount to access their content, given that they know how popular it is. However, emerging artists have no reputation to fall back on, so it's harder for them to profit from their content.

This whole discussion on how the digital world provides vast opportunities for visibility largely rests on the link between digital content distribution and concert attendance. Marketing experts call this "fan-based marketing". Truth be told, this magic formula has only yielded results for a handful of musicians; it remains out of reach for most of them.

On the topic of discoverability, concert musicians face a sizeable challenge: How do we ensure that audio and video files uploaded by Quebec musicians become discoverable by their audiences, knowing that these files have now entered a competitive space, featuring not only the local scene, but musicians and orchestras from all around the world? In a field like classical music, which is largely based on a common repertoire, how can Quebec musicians distinguish themselves in the digital world, which probably already features a number of versions of the same piece they offer their fans?

This issue is even more concerning for concert musicians, because, like in most of the arts, the role experts play in recommending cultural products is dwindling away.

In closing, it seems that, nowadays, releasing simple audio files with musical performances is increasingly inadequate to meet consumers' high expectations. They increasingly want an added value: something that allows them to see, experience and understand the music. That appetite leads to an explosion of digital products, which can be expensive to produce, and provide little returns: event footage, educational and utility apps, virtual reality, sound installations, and so on.

Here are the main, possible solutions that have emerged from our investigation.

The first is about production funding. We need a reform on how public funding is distributed, in order to better reflect the production costs and the costs associated with current production structures. Then, Internet service providers must be required to contribute to production funds for cultural digital content. We suggest putting a culture tax on devices that play digital content, as well as reforming the music industry's taxation to include tax credits, like those offered in the film industry.

We recommend having a copyright reform on royalty payments, and introducing a uniform system of data collection that would allow people to identify right holders.

Furthermore, we need education on copyrights. We need to inform musicians of their rights and responsibilities, and raise public awareness about the repercussions their online actions have on the arts and culture, and about responsible consumption in this sector.

● (0855)

Lastly, we need promotion initiatives to spread awareness for content available on the large, international platforms.

Thank you.

The Chair: Thank you very much.

[*English*]

I just wanted everyone to know that we are now joined by Andrew Morrison of The Jerry Cans. Welcome.

Just to let you settle in, we will go next to Graham Henderson from Music Canada, please.

Mr. Graham Henderson (President and Chief Executive Officer, Music Canada): Thank you.

That was an excellent presentation, by the way. Thank you, Mr. Trudel.

My name is Graham Henderson, and I'm the President and CEO of Music Canada, and we're passionate advocates for those who create music and for the music itself.

I'm very pleased to see the heritage committee studying remuneration models for artists in creative industries. This is an aspect of the music industry system that I, and Music Canada, have for years been working to modernize. Creating a functioning marketplace, where creators receive fair compensation for the use of their works, forms the bedrock of our mission.

However, the reality for Canadian creators is that there are provisions in our own Copyright Act that prevent them from receiving fair market value for their work. I believe the best way this committee can assist in creating that marketplace, one that is transparent and supports Canadian creators, is by providing the government with straightforward and accessible solutions to address what we call the "value gap". Music Canada has produced a comprehensive report on the value gap in Canada, which you will find in French and English in front of you. It's one-of-a-kind in the world, in fact. There's a tear-away sheet on the front that defines the value gap for you as the "significant disparity between the value of creative content that is accessed and enjoyed by consumers, and the revenues that are returned to the people and businesses who create it".

Today, more music is consumed than at any time in history. However, the remuneration for that content has not kept pace with the record levels of consumption. I was pleased to hear Minister Joly recognize this point earlier in the year when she stated, "The benefits of the digital economy have not been shared equally. Too many creators, journalists, artists have been left behind...".

The origins of the value gap extend back more than two decades to a time when countries around the world, including Canada, began adapting and interpreting laws created in another era to protect common carrier telephone companies in the then-dawning digital marketplace. Around the world, those laws understood the Internet as a series of "dumb"—and that's the term that was used—pipes where your browsing habits were anonymous and the data travelling between sites was so vast it was unknowable. Twenty years later, we know that the Internet is composed of the smartest pipes humankind has ever made. Your web habits are meticulously tracked and metadata that it generates is collected, analyzed, and sold every second of the day.

While well-intentioned when they were created, the impact of these laws today is that wealth has been diverted from creators into the pockets of massive digital entities, intermediaries. What little is left over for creators is concentrated into fewer and fewer hands. As a result, the creative middle class is disappearing, if it hasn't disappeared already, and with it numerous jobs and opportunities.

There's no need to point fingers. No one planned for the creative middle class to suffer. The important thing at this juncture is to move forward purposefully and without delay to get the rules right. You should make absolutely certain that Canada's Copyright Act ensures the creator's rights to be fairly remunerated when their work is commercialized by others.

The foundation of the value gap is outdated safe-harbour policies and exceptions all around the world. A safe harbour, by the way, is a way to limit the liability of an intermediary and allow music to be consumed without payment. I know that Minister Joly and Minister Bains are working on this issue and having conversations with their counterparts around the world to find a solution. Here in Canada there are particular laws that exacerbate the value gap by effectively requiring—and think about this—creators, individual creators, to subsidize billion-dollar commercial technology companies.

Here are four steps that this committee could recommend immediately that would help creators immediately and would harmonize Canadian policy with international standards.

● (0900)

First, remove the $1.25-million radio royalty exemption. Since 1997, commercial radio stations have been exempted from paying royalties on their first $1.25 million in advertising revenue. It amounts to an $8-million annual cross-subsidy paid by artists and their recording industry partners to large, vertically integrated, and highly profitable media companies. Internationally, no other country has a similar subsidy. The exemption does not apply for songwriter and publisher royalties, meaning that performers and record labels are the only rights holders whose royalties are used to subsidize the commercial radio industry. This is unjustifiable and it should be eliminated.

Second, amend the definition of sound recording in the Copyright Act. The current definition of sound recording excludes performers and record labels—here we go again—from receiving royalties for the use of their work in television and film soundtracks. This exception is unique to television and film soundtracks, and does not apply to composers, songwriters, or music publishers. It is inequitable and unjustified, particularly in light of the profound role music plays in soundtracks. It is costly to artists and record labels, who continue to subsidize those who exploit their recordings to the tune of $55 million a year.

Third, amend the term of copyright for musical works. The term of copyright protection in Canada for the authors of musical works is out of line with international copyright norms. Under the Copyright Act, protection for musical work subsists for the duration of the author's life, plus a further 50 years. By contrast, the majority of Canada's largest trading partners recognize longer copyright terms, and the general standard of life plus 70 has emerged. I note that the vice-chair of this committee, Mr. Van Loan, introduced a private member's bill on this issue, and we thank you for that.

Fourth, renew support for music creators. Various decisions have limited the private copying levy, originally intended to be technologically neutral, to media that are effectively obsolete. This important source of earned income for over 100,000 music creators is now in jeopardy unless the regime is updated. Music creators are asking for the creation of an interim four-year fund of $40 million per year. This will ensure that music creators continue to receive fair compensation for private copies made until a permanent, long-term solution can be enacted.

Each of these changes removes an unfair subsidy, harmonizes the laws within our industries, and brings us to international standards. They can be enacted today.

As the creative community anxiously awaits this review of the Copyright Act, an organization called Focus on Creators sent Minister Joly a letter that has now been signed by more than 3,650 Canadian creators. In that letter, creators discussed their concerns with the value gap and how it is causing middle-class artists to disappear in Canada. The creators' letter concludes with a message that I hope you will take to heart: "We know you understand the cultural significance of our work; we hope you also see its value and crucial place in Canada's economy. We ask that you put creators at the heart of future policy."

Thank you.

● (0905)

The Chair: Thank you.

Next we have Andrew Morrison from The Jerry Cans, and I understand you had concerts here in Ottawa just recently?

Mr. Andrew Morrison (The Jerry Cans): Last night, actually, at A Taste of the Arctic.

Hon. Peter Van Loan (York—Simcoe, CPC): Congratulations.

Mr. Andrew Morrison: Finding parking was the biggest challenge of all.

Voices: Oh, oh!

Mr. Andrew Morrison: The little country boy from Nunavut. I come from Iqaluit, where we can park wherever we want. It's a bit of a different context.

I'm a bit out of my element today. I'm an artist first and foremost. We're from Iqaluit, Nunavut, so we're in a unique position within the music industry in Canada. As artists, we're not.... I want to agree with everything Graham just said. I'll steal his notes and read them again.

We sing in Inuktitut. That's part of what we do as The Jerry Cans. It's part of a very important music trend in Canada, the indigenous music scene and what's happening there. I have a lot of things to say about the music industry, but in terms of copyright, I think it's very important to understand the relationship between copyright law and indigenous music forms. It is a unique situation that should be acknowledged within any new legislation that comes out.

We incorporate throat singing, and we are very wary because throat singing is now becoming an internationally known art form, with Tanya Tagaq and her collaborations with The Jerry Cans and a few other artists. We wonder how that throat singing could be used and how traditional art forms should be protected and be ensured compensation when they're performed on international scales. That's what I wanted to bring in my presentation; it's not much more than that.

I also think that as artists, we struggle because of what's happening in the music industry right now. Our music production —the songs we make and songs that we produce—is such a small part of our income generation now, and we don't necessarily see.... I think that's because of what's happening in the copyright world. We're losing so much control and power over our own music and creative forms.

We're very confused about what to do about it, because we feel a bit powerless about where our money's coming from. We perform to make money. A new song that we create is more of a business card than any form of making a hit single or anything like that, so I am hopeful that we can figure out a way.

We've toured with some international artists who see Canada as a very special place. They think the support for music in this country is very strong, and I think we need to keep it that way. I also think we need to figure out how to more properly compensate artists for their music specifically, because touring is tiring—as you can see. I played a show until midnight last night. I do think it's important to present the artist's perspective. We sometimes get lost in the conversations, because these things are quite complex, and we struggle to understand the world of copyright.

I think there's a lot to be done. Also, when Graham was talking about middle-class artists, I was like, "I want to be one of those" because of the situation we find ourselves in. If we pie-chart out our revenue, what comes from copyright is so little now. I'm a young artist, and the older generation is telling me about the glory days of getting royalty cheques. I say, "Sweet. What's that? I'll buy you a coffee with mine."

I do think there's potential to figure it out. I don't know about these specific situations, but I think it's important to hear from artists and realize that the way we think about copyright is changing a lot. We don't necessarily see releasing a song as a way to pay for the rent or whatever. I also want to reiterate that it's important to acknowledge the importance of understanding how indigenous art forms fit into copyright law in Canada. I'll leave it at that.

Coming from Nunavut, it's especially difficult because it's so expensive up north, but I think it's one of the most important music trends in Canada right now. Figuring out how to support that properly is something I'll leave up to you.

Thank you. *Qujannamiik*.

Come visit us in Nunavut.

● (0910)

The Chair: All right.

[*Translation*]

I would like to thank all the witnesses for their presentations.

[*English*]

I think we're going to be getting a lot of interesting questions on this panel coming up.

[*Translation*]

We will start with Mr. Breton.

Mr. Breton, you have the floor for seven minutes.

Mr. Pierre Breton (Shefford, Lib.): Thank you, Madam Chair.

I would like to thank the witnesses for their excellent presentations and recommendations.

My first question is for you, Mr. Trudel.

Essentially, it seems to me that the focus of the Conseil québécois de la musique is concert music. Correct me if I'm wrong.

Can you explain what challenges concert musicians face, regarding remuneration, as compared to other types of musicians? Can you tell us how this affects your field more than other fields?

Mr. Dominic Trudel: Concert music is unique in that ensembles vary in size. Symphony orchestras can have more than 100 musicians, but there are much smaller ensembles, such as quartets. Therefore, it's these small groups that could be compared to other small, pop bands, although, it's often not only about one performer. Classical music has some great soloists, but their popularity cannot be compared to that of pop singers.

Another unique thing about concert music is that it's a niche market. You first need to find an audience that is willing to pay to listen to concert music. It is a very special, niche audience.

The other thing about classical music is that all orchestras share the same repertoire of internationally renowned composers, making it very hard to stand out in the digital landscape.

With all of these changes happening right now, it's very difficult for classical music groups to distinguish themselves on the Internet, to reach their audiences, and to get the royalties they are entitled to, yet get hardly any of.

Perhaps what is truly unique with concert music, compared to popular music, is that it is niche music, and reaching audiences is much harder than with other types of music.

Mr. Pierre Breton: You gave us some of your recommendations. You might have others, but can you tell us which are the two main ones that you would like to see included in our report, those that are truly worthy of our in-depth study?

Mr. Dominic Trudel: Copyright royalties are important, and I believe that we should absolutely have a uniform system of data collection. Metadata are used to identify composers, artists and performers from the pieces so that right holders can be recognized worldwide and genuinely get paid. Already, from the outset, it is paramount that the current study of the reform of the Copyright Act include ways to identify performers from around the world.

The other thing is that consumers nowadays are no longer paying for content, but rather for access to it. It's rather nonsensical to say that consumers have access to many things, but that they don't have to pay for the products. Multinationals that grant this access absolutely need to pay more for content. We need to find a way to ensure higher copyright royalties than we have today.

● (0915)

Mr. Pierre Breton: Thank you.

I have a question for the representative from Music Canada.

Mr. Henderson, can you tell us more about how the value gap affects the Canadian music industry? You are part of this industry, and your mission seems to be focused on this. So, we would like to hear what you have to say.

[*English*]

Mr. Graham Henderson: Sure. You could think back to 1999, when the music industry in Canada was at its peak. Today, it's a mere shell of itself. While there have been a couple of years of modest growth, there was a period of sustained decline. If you take inflation into account, we're only back to 50% of where we were then, and that doesn't take into account the explosion in consumption.

The time spent listening to music today has doubled or tripled. It's absolutely staggering, but we're not getting paid for it. We had an economist look at it, and we've estimated that between 1999 and today, in music alone in Canada $12 billion is missing. That, ladies and gentlemen, is why this man has trouble getting into the middle class.

[*Translation*]

Mr. Pierre Breton: Mr. Morrison, do you have anything to add to what Mr. Henderson just said?

[*English*]

Mr. Andrew Morrison: I agree. When we're touring or when we're networking with older musicians, they talk about a very different time 10 or 15 years ago in the music industry, and we don't know what that means. They say how different it was and how the process of making a career in music was such a different way of doing things.

You could release a song and make money from that and nowadays, as you said, we're all on Spotify. We're consuming music through streaming. When we look at our numbers we have to laugh because it's so challenging for us to see our life, our blood, our work consumed for very little. It's basically for free.

We've grown up in that context so that's our normal but there was a time when artists would be getting paid fairly and properly for that same consumption, and so I think some inequalities are happening. I know it from my own experience, I would love some more money.

Mr. Graham Henderson: You said it, instead of subsidizing major corporations.

The Chair: Thank you.

We will now go to Mr. Van Loan for seven minutes, please.

Hon. Peter Van Loan: Music Canada, one of your specific recommendations is to remove the $1.25-million radio royalty exemption, which has been in place since 1997. First, if I understand it correctly, in 1997 broadcast compensation to others, songwriter and publisher royalties, kicked in but there was an exemption applied to the—

Mr. Graham Henderson: The songwriters had always had it. It was the performers who didn't have it, and that's when it kicked in for the performers.

Hon. Peter Van Loan: Let me just get to the point. What was the rationale behind the $1.25-million royalty exemption? My guess is that you wanted to support, or there was an objective to support, small-town radio stations so they had a critical base.

If that was the rationale, why does that no longer apply?

● (0920)

Mr. Graham Henderson: We didn't have any input at all. This was a last-minute amendment that was added at 12 seconds to midnight so there was no real input. The rationale was that small, individual radio stations—mom-and-pop, as they were described—would be crippled by the addition of having to pay royalties on this first $1.25 million, even though the amount of money was minimal, to say the least. Nonetheless, that went in. It was intended to be transitional, and what was intended to be transitional has become semi-permanent.

Also, the landscape has completely changed. Radio in that day was not as profitable by any stretch of the imagination, and now it's vertically integrated. While there might have been a rationale for a subsidy then—which is what it is, when you create an exemption, creators are subsidizing somebody—today it does not exist and to the extent that there are small stations, community stations, and so forth, we continue to exempt them.

Hon. Peter Van Loan: That's the case for, say, university campus radio or stuff like that.

Mr. Graham Henderson: That's correct.

Hon. Peter Van Loan: Why would the mom-and-pop stations still be exempted under your changes? How would you structure it so they wouldn't be harmed?

Mr. Graham Henderson: I think we have to have a proper way to measure this. Instead of treating everybody the same—whether you're Bell Media or a small station in Saskatoon that is independently owned—we have to find a way to discriminate between the two. I don't think it's that difficult. I think you just have to draw a line somewhere and those who fall beneath the line, such as that type of individually owned station that would find that type of payment to be critical, then you exempt them and the same thing with community and college radio.

Hon. Peter Van Loan: Did you have a proposal of how one would structure that line?

Mr. Graham Henderson: I do, but not with me today. We are prepared to put a proposal before the committee that would do that.

Hon. Peter Van Loan: If you could do that, I think that would be much appreciated.

You say that the sound recording definition for television and film soundtracks effectively exempts royalty payments. Can you explain that?

Mr. Graham Henderson: Sure, that's another exemption. The best example I've heard came from performing artist Miranda Mulholland, who I believe is very familiar to this committee. She has written to you in the past.

The example she gives is, as a performer—not as a songwriter—she performed on *Republic of Doyle*. Her music is performed all around the world and aside from the original $100 payment, or whatever it is she got for going into the studio to play the violin, she receives no residual payment, whereas the person who wrote that song does.

That inequity exists in our law. It's an exemption that is worth about $55 million to performers in our country. Getting rid of it simply puts us on the same playing field as the rest of the world.

Hon. Peter Van Loan: You're saying that it has to be redefined. You have to change the definition. It's not getting rid of it, it's changing the definition. Can you provide us with a suggested wording?

Mr. Graham Henderson: Yes, the language is very simple. It's removing three or four words.

Hon. Peter Van Loan: For the benefit of people like me who get very confused by this stuff, what are all the revenue slices from a piece of music? We hear about performers, authors and so on. What are the different slices of the pie that exist in these royalty revenues? It's odd that, for example, you say that there's an exemption for performers and creators here, other than songwriters, composers, and the musical publishers. Can you explain all the different slices of the pie that comprise royalty revenue?

Mr. Graham Henderson: A song has two copyrights. It has the copyright that comes from the songwriter and it has the copyright from the performer. They're very different. It creates these two separate rights. They're not always the same person.

Once upon a time, in fact, it was rare that they were the same person. The job of what they called an "A and R" person in the labels, in the sixties and fifties, was to match an artist, A, with repertoire, R. They would bring them together and create great music.

Then came the era of the singer-songwriter, where they merged.

My wife, Margo Timmins, for example, did a very famous cover of a Lou Reed song, *Sweet Jane*. For years, when that was performed on the air, Lou Reed, the songwriter, got paid, but Margo Timmins, the performer, didn't. That was fixed in 1997, but with a whole slew of exemptions.

Those are the two basic copyrights.

● (0925)

Hon. Peter Van Loan: When a record label or a publisher is involved, what's their slice? Is it a piece of the songwriter slice? Is that based on a contractual arrangement? Are there more than two slices?

Mr. Graham Henderson: Those are commercial arrangements. I was an artist lawyer for almost 15 years. In the case of the singer-songwriter, you would sign a record contract. The record contract would spell out royalty provisions, copyright, the amount of money that would flow to the artist, and what the artist is giving up. It's a commercial exchange.

It would be the same thing for a publisher. A publisher works specifically with the songs, not necessarily the master recording. Again, you would find contractual relationships that would dictate how the money flows.

Today, we're talking about remunerative rights. All of these remunerative rights benefit artists equally: fifty-fifty with labels. I think that's particularly important. Also, with the rise of the artist entrepreneur—the artist who owns their own master recordings—sometimes they have 100% of it.

The Chair: Thank you very much.

[*Translation*]

We will now go to Mr. Nantel.

Mr. Nantel, you have the floor for seven minutes.

Mr. Pierre Nantel (Longueuil—Saint-Hubert, NDP): Thank you, Madam Chair.

Good morning, everyone.

I would like to thank all the witnesses.

Mr. Henderson, I think that your presentation today was probably the best you have ever made. It is paramount to get a clear picture of what's going on with copyrights. We must also keep in mind that other major reviews are coming up. I am specifically thinking of the reform of the Broadcasting Act.

However, we're talking about authors' remuneration here, and we need to remember this. We can discuss topics such as the visibility of our culture in the context of these technological changes and everything related to that, but we are actually talking about our authors' and our artists' remuneration.

Mr. Morrison, from The Jerry Cans, I first have to say that I find you extremely refreshing. It's wonderful to realize that you've come from so far away. Yesterday evening, you were on stage, playing a show, and you're here this morning. Thank you so much. I must admit that I find it odd to hear you say that you have no idea what we're talking about when it comes to user rights for recorded artworks. I also see people here from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo, the ADISQ, and from the Quebec Collective Society for the Rights of Makers of Sound and Video Recordings, the SOPROQ.

I think that Mr. Henderson said it right: We have earned our living as creators, and I can confirm this as someone who was in the music scene. That's how we did it: by creating. It is marvellously refreshing to hear from you, Mr. Morrison, and I think that it is very important to remember that we work for people like you.

Mr. Morrison, can you briefly tell us what you're referring to when you say that this reform is particularly important for indigenous art forms?

[*English*]

Mr. Andrew Morrison: I see now that there is an explosion of indigenous music, and the economics behind it.... It's becoming an important part of the Canadian music industry. It is also being exported across the world right now.

My partner is a throat singer. We work with many throat singers and that's the most clear example of how.... When these songs and these things are being reproduced in the classical world, and all of the different music worlds, I know that there needs to be specific attention put to indigenous art forms to protect them and to make sure that artists are getting paid for their work. If a throat singing song is sampled in a song in Germany, there must be protections in place to protect indigenous artists in Canada. That's something that can often get forgotten in the policy world. I think it's very important. It is only going to become more important and more of an issue.

I'm sorry, I'm speaking too much.

Mr. Pierre Nantel: Thank you. You got it right on. If this is going to be the next wave, let's get it right from the start.

Mr. Andrew Morrison: It is.

Mr. Pierre Nantel: It links directly to Miranda's violin part in *Republic of Doyle*, because a throat-singing performance could be not compensated properly.

Mr. Henderson, you referred to your wife, to Cowboy Junkies. I still remember Prime Minister Trudeau crying when Gord Downie's death was announced.

Being from Montreal, I remember that there were a few bands from the rest of Canada that would give a few concerts at The Spectrum at the time, and Cowboy Junkies were among them, as well as The Tragically Hip. Mr. Trudeau cried so much, and he was so right, because Canadian identity is in The Tragically Hip so much, and in other bands.

Can we protect Canadian content now, as we did before, in this sea of content coming up? I'm sure we can, but I'm asking you how important it is to creators.

● (0930)

Mr. Graham Henderson: One of the reasons we can protect it is just by how fantastically good it is and how good it has always been. It has always been able to stand on its own. It was assisted by Canadian content rules, but at the end of the day, what made those rules work was just how fricking good the music was.

I want to point out also a commonality between Mr. Trudel and Mr. Morrison. Mr. Trudel made the point that the Internet, or this system, is poorly tailored to classical music, and it's poorly tailored to indigenous music. It's poorly tailored to what you might call a niche, something out of the order. Everything gets concentrated in the big pop environment. That is not right, and that can be fixed.

Mr. Pierre Nantel: Thank you, Mr. Henderson. I'm going to ask you a very short question about the YouTube situation. YouTube, by bringing music without the consumer asking for whatever song, behaves as a radio, sells advertising—

Mr. Graham Henderson: It's a gigantic recommendation engine. It's not passive.

Mr. Pierre Nantel: That's right, so the money comes from advertising, but it's not perceived as a right in broadcasting. Am I right in saying that? That is what should be changed.

Mr. Graham Henderson: Yes. There's a chart in front of you that shows the shocking disparity of what happens when you create safe harbours. If you look at the chart here with the little bars on the left, you can see that you have paid, advertising-supported music, so that's Spotify, people who are subscribing. There are 200 million of them. They return $4 billion in revenue. Then there's YouTube beside it, the user uploaded services. There's one billion of them and they return $500 million.

Mr. Pierre Nantel: You rest your case right there as an attorney.

Perfect. That says it all.

[*Translation*]

I have one last question for Mr. Trudel.

The system used by Spotify was mentioned, and it is true that the situation is certainly better on their platform than on YouTube. However, in spite of that, the royalties are appalling. The major international publishers have negotiated them for their profit, and are looking for shares of data sales around the world. That's how they make money, it seems.

I believe that the artists of the group Les Violons du Roy, who are certainly very important to you—I discovered them at the Opus Awards galas—are part of the *Fifty Shades of Grey* compilation. They performed a piece by Johann Sebastian Bach, if I remember correctly. It's a compilation that certainly had very high visibility worldwide.

Do you think it is possible to ask the artists of Les Violons du Roy to assess their royalties or to compare the amount they received for this performance and the amount they received following their greatest success as artists?

You talked about the discoverability of concert artists, who are also from Quebec. Do you think that's interesting?

It is true that the Spotify and Apple Music platforms are much better than the YouTube platform, but the creators receive lousy royalties. Isn't that right?

Mr. Dominic Trudel: Yes. Absolutely.

We would have to ask the artists from Violons du Roy. I don't have the figures, but it's very clear that the royalties that musicians have received are not comparable to what they could get from the sale of albums, for example, when albums were selling a lot.

Mr. Pierre Nantel: That's right.

In light of what Mr. Henderson just said, I note that we are not in a niche market. *Fifty Shades of Grey* becomes mainstream material, so we can see that it can work, worldwide, for major products like *Fifty Shades of Grey*, but maybe not at all.

Thank you very much.

The Chair: Thank you.

We will go to Mr. Hébert.

Mr. Hébert, the floor is yours for seven minutes.

Mr. Richard Hébert (Lac-Saint-Jean, Lib.): Thank you, Madam Chair.

Thank you very much for your presentation, Mr. Trudel.

[*English*]

Mr. Morrison and Mr. Henderson, it was very good.

[*Translation*]

My two questions are for Mr. Trudel.

I understand that you provide training and support services for artist management through your Diapason platform. Am I mistaken?

Mr. Dominic Trudel: No, you're not mistaken. That is indeed the case.

Mr. Richard Hébert: Here are my questions.

Do you have such services for copyright information?

Do you think that the federal government should have permanent tools to make artists, as the rights holders, aware of copyright?

● (0935)

Mr. Dominic Trudel: Absolutely.

There is training on copyright. For artists, simply figuring out what they are entitled to and how to go about asserting their rights, especially when it comes to self-production, is extremely complex. Artists are increasingly called upon to produce their own work. The complexity of the clauses they must keep in mind makes it extremely difficult for them to exercise their rights, because they must understand all the nuances of copyright. It is a challenge to train artists who choose self-production and are representing themselves, but we are doing it and we hope we can do more.

Yes, tools are needed to make artists aware of their rights. The philosophy of sharing and discoverability means that, if an artist does not get a monetary gain from the distribution of their music, they will still gain visibility, discoverability, and so on. Since artists want to expand their audience, they will be readily generous and let their products go, but they should get some royalties in return. It is therefore very important to have proper, standardized and consistent tools so that the rhetoric is the same across the board.

The government certainly needs to think about tools for artists.

Mr. Richard Hébert: Thank you.

My next question is for Mr. Henderson.

The European Union and the United States have recently adopted new copyright standards, particularly in the digital realm.

Considering that we share an area of economic integration with those two entities—I am specifically referring to the United States, of course—should we harmonize our copyright laws and regulations with theirs?

[*English*]

Mr. Graham Henderson: Absolutely, and I think that's why, if you look at the four suggestions we've made, you'll see that this is not really so much adapting to what the EU is doing at this moment. It's more catch-up, and that's the problem: we haven't caught up. We've let these old subsidies kick around. We haven't extended the term of copyright. We've allowed the private copying levy to become a shadow of itself, all because we haven't played catch-up. The first step is to do that.

What the EU is doing is taking a much broader, more comprehensive look at the entire digital ecosystem, and it's focusing in fact on the safe harbours, among others. In the United States, the Music Modernization Act—and I think that's what you were referring to—also falls into that category of a law that is catching people up and addressing imbalances, but what everybody shares in common is, thankfully, after all this time people and governments are recognizing that somewhere along the way they got it wrong. We got it wrong. These were good-faith errors, and we now need to help creators. We need to level this playing field. We need to start putting creators at the heart of our policy-making.

Mr. Richard Hébert: Thank you.

Do I still have some time?

[*Translation*]

The Chair: You have two minutes left.

Mr. Richard Hébert: My question is for Mr. Henderson once again.

Do you think that the current protection system for companies doing business over the Internet is sufficient to cut down on piracy, an activity that everyone is engaged in abundantly?

[*English*]

Mr. Graham Henderson: A lot of people felt that pirating went out the door with CD pirating. In fact, one of the most formidable challenges that we face today is stream-ripping. We all know we're living in a world where most people access their music through a service like Spotify, Deezer, or YouTube; it's online streaming. It was referred to earlier as an access model by Mr. Trudel. So it's an access model; we're not selling something.

I'm sorry, I just lost my train of thought on the question. What was it?

[*Translation*]

Mr. Richard Hébert: Do you think the protection system that the companies are using is sufficient to halt piracy?

● (0940)

[*English*]

Mr. Graham Henderson: Right, sorry.

Now we live in a streaming world and we have this problem with stream-ripping. What that means is you can get a very simple program that takes a stream and converts it to an MP3 file, which you then keep. The moment you do that you have destroyed the marketplace for music.

Are we doing enough? I don't think we are ever doing enough. It's not necessarily the problem that it was once, but it's a very significant problem and it erodes the ability of legitimate services like Spotify to convert subscribers to paid subscribers when all you have to do is get a stream-ripping service, rip the stream, convert it to an MP3. So it remains a problem.

Mr. Richard Hébert: Thank you.

[*Translation*]

The Chair: You have 30 seconds left, Mr. Hébert.

[*English*]

Mr. Richard Hébert: I will give it to my best friend.

The Chair: You have about 30 seconds, but you can have a minute if you want.

Mr. Richard Hébert: No, it's okay. I think Gordie is ahead of me.

Go ahead.

Mr. Gordie Hogg (South Surrey—White Rock, Lib.): I'm so pleased that we're best friends. That changed my day. I'm feeling a lot better about that. Thank you.

I came into this thinking I had an understanding, then thinking I'd lost the understanding, and now I'm trying to come back to getting an understanding.

In the four recommendations you made, you talked about the value gap being the issue, and then trying to respond to that value gap with these four recommendations. There were what you called "good-faith errors", and now we're to take remedial actions. I think you're trying to get us contemporary. I don't hear anything in there about future flexibilities. I guess you're talking about getting to the here and now and then at that point looking into the future to see where we go from there.

Am I still with you?

Mr. Graham Henderson: You are, and there is lots more the committee is going to hear from folks, and there is lots more that can be done, but if you're looking for something immediate and something that harmonizes our laws and redresses ancient wrongs, these are the things to do.

The Chair: We are over time.

Mr. Gordie Hogg: I was just getting really good too.

The Chair: There is the ability to put in written submissions as well if there's something that has been raised by the questions, of if there are other things you hear and you want to add in later.

We are going to suspend briefly as we move to our next panel.

Thank you to all of our witnesses.

● _____ (Pause) _____

●

● (0945)

The Chair: Let's get started again. I want to make sure that we have enough time for all of the presentations and the questions.

For our second panel, we have Lisa Freeman and Lyette Bouchard from the Canadian Private Copying Collective.

We have Alan Willaert from the Canadian Federation of Musicians.

[*Translation*]

We also have Benoit Henry and Jean-Pierre Caissie from the Alliance nationale de l'industrie musicale.

[*English*]

Why don't we begin with the Canadian Private Copying Collective, please.

[*Translation*]

Ms. Lyette Bouchard (Chair, Canadian Private Copying Collective): Good morning.

Members of the committee, thank you for the invitation.

My name is Lyette Bouchard and I am the Chair of the Canadian Private Copying Collective (CPCC). As you said, Madam Chair, I am here with Lisa Freeman, who is the Executive Director.

In 1997, the Copyright Act was amended to allow Canadians to copy sound recordings on audio recording media for their private use. At the same time, the private copying levy was set up so that creators would receive remuneration for the use of their music. That was the private copying.

In compliance with the act, manufacturers and importers of blank audio recording media pay a small levy for any imports or sales of such media in Canada. Those levies are collected by CPCC for its member companies, which represent performers, songwriters, music publishers and record companies.

For many years, the private copying levy was a major source of revenue, generating over $300 million in revenue for 100,000 music creators, which, of course, helped them continue to create and market important cultural content.

Initially, the act was drafted to make the private copying regime technologically neutral. However, decisions by the Federal Court of Appeal and the previous federal government have restricted the regime to media that are quickly becoming obsolete. I'm talking, of course, about blank CD copies.

Since most consumers currently make copies of music on devices such as smartphones or tablets, the use of blank CDs to copy music is rapidly decreasing. As a result, revenues for music creators related to private copying are also in free fall.

Annual revenue from the private copying levy has decreased by 89%, from a peak of $38 million in 2004 to less than $3 million in royalties in 2016.

In 2015-16, Canadians copied more than 2 billion music tracks, more than double the copies made in 2004. However, right now, rights holders receive no compensation for most of those copies, including the hundreds of millions of unauthorized copies made on devices such as smartphones.

What would be the situation if Canada had followed the European example in 2012 when the act was last revised and made the system technologically neutral so that a levy would apply to smartphones and tablets? According to sales data for those devices, a royalty of $3, which is the European average, would generate $40 million per year for rights holders. Between 2012 and 2017 alone, the music industry lost $240 million.

It is urgent that we act.

The CPCC recommends that the government make the system technologically neutral to keep pace with the way Canadians consume music.

The solution is to amend the act so that the regime applies to both audio recording media and devices such as smartphones or tablets.

The CPCC is also proposing other very minor amendments to the act. In a sense, it is sufficient to clarify that the regime applies only to copies made from a sound recording in a person's possession. However, we want there to be no confusion: offering or obtaining music illegally, whether through an unauthorized online service, online stream ripping or even stealing an album from a store, remains illegal. Of course, stealing is an illegal act.

It must also be clear that the private copying regime must neither undermine legal online music services, nor legalize illegal services.

Whenever possible, rights holders licence the fruits of their labour for those who wish to use them. The private copying regime is only intended to compensate copies that cannot be controlled.

We need a permanent legislative solution, but in the meantime it is essential that a $40 million interim fund be put in place, as Mr. Henderson pointed out earlier.

Thank you.

Ms. Freeman, it's your turn.

● (0950)

[*English*]

Ms. Lisa Freeman (Executive Director, Canadian Private Copying Collective): I wanted to focus again on the very good reasons to fix the private copying regime. Just as Music Canada had four points to make, I can give you three categories of good reasons to fix the private copying regime.

First, it remains the best solution to what is an ongoing problem. Streaming may dominate the legal music market, but Canadians still value and make copies of music, over two billion per year since 2010. It has been quite consistent. The levy system is the best mechanism to compensate rights holders for copies that can't be licensed, which remains the bulk of those copies. It just needs to be amended so that it can keep up with how Canadians consume music in a changing marketplace, now and in the future.

With minimal revisions, the private copying regime can be restored to what it was originally intended to be, a flexible, technologically neutral system that monetizes private copying that cannot be controlled by rights holders without undermining legitimate online music services.

The process for setting levies would remain the same, as the CPCC would be required to file a proposed tariff with the Copyright Board and to prove through empirical evidence which devices and media are ordinarily used to copy music.

As it stands now, Canada is an international outlier. Most countries in the EU and some countries in Africa and Asia, about 40 strong regimes around the world, embraced the technological shift years ago and now have healthy private copying regimes that extend levies to a wide variety of media and devices like smart phones and tablets. In Europe, that includes Austria, Belgium, Croatia, France, Germany, Hungary, Italy, the Netherlands, Portugal, and Switzerland.

A comprehensive global study of private copying produced in December of last year by CISAC, which is an international organization of authors' societies, called out Canada in particular on the need for our regime to be "updated and adapted to new uses with levies on digital devices". That is the first set of reasons.

The second set of reasons revolves around the question of fairness. In the past two decades, the private copying levy has answered an important need for both rights holders and consumers of music in Canada, allowing both for fair compensation to rights holders and for consumers to benefit from knowing their copies are legal. Without a legislative solution like the one the CPCC now proposes, Canadians' private copying activity will remain illegal, and royalties to music creators to compensate them for the massive private copying of their work will very soon be completely eliminated.

Canadian music creators need to be paid for this extensive use of their work, just as the businesses producing and selling the devices used to copy music all get paid. The private copying levy is not a tax, nor is it charity or a subsidy program. It is earned income.

The Copyright Board ultimately determines the value of the levy. However, CPCC's proposed levies will certainly be a small fraction of the cost of a smart phone or tablet, and will be comparable to the levy rates in most European countries where the average levy payable on a smart phone is around three dollars, the price of a cup of coffee.

As always, the levy would be payable by manufacturers and importers of the media and devices. In fact, we all know that the cost of many smart phones and tablets is already subsidized for consumers by the intermediary companies that provide the devices in a bundle with mobile network services.

The third and last category of good reasons for fixing the private copying regime I want to leave you with is the urgency around it. We can't begin to stress how urgent this matter is. As you have heard just now from Music Canada, at the same time as music creators have been losing revenue from the private copying regime, their income from many other sources has also been in decline, in part due to additional exceptions to copyright introduced in the 2012 revisions to the act.

The individual Canadian artists and Canadian businesses whose music is copied for personal use can only produce and compete on the international stage if they are paid when their work is used.

We urge the government to immediately follow this parliamentary review with the introduction of legislation so that the necessary minor amendments to the act can be made as soon as possible.

Thank you very much for your time. We look forward to your questions.

● (0955)

The Chair: Thank you.

We will now go to Alan Willaert from the Canadian Federation of Musicians, please.

Mr. Alan Willaert (Vice-President, Canada, Canadian Federation of Musicians): On behalf of the musicians of this country, thank you very much for the invitation to be here. I appreciate it very much.

Much of what I will be saying was already said quite eloquently by Graham Henderson of Music Canada. It will be a repeat simply because most of what the Canadian Federation of Musicians does focuses on contract law on behalf of its members. We are not involved in the collection of copyright, per se. However, because of the direct impact on our members, this is of extreme importance to us.

Many recording artists and professional musicians have captivated international markets and left their mark at the top of the charts. We have much to offer the world, because we are a society that values creativity and innovation. Our government must ensure that its policies and regulations reflect the value we have for our creative community and the arts. This consultation should lay the foundation for the regulatory and policy tools and for the financial support needed to ensure that Canadian professional musicians thrive in the digital environment now and in the years ahead.

Our first recommendation—again, following on Music Canada's recommendation—is to amend the definition of "sound recording". The current definition of sound recording in the Copyright Act needs to be amended so that performers can collect royalties when their recorded performances of music on soundtracks of audiovisual works, such as TV programs and movies, are broadcast or streamed on the Internet and when they are presented in movie theatres. To this end, we recommend the ratification of the Beijing treaty to ensure that this works properly.

Our second recommendation is to remove the $1.25 million royalty exemption for commercial broadcasters. Amending the Copyright Act to remove this unnecessary exemption for commercial radio would add millions of dollars' worth of royalties for recording artists. One issue that was not brought up earlier was the fact that the $1.25 million exemption was originally only supposed to be to mom-and-pop stations that had $1.25 million or less in revenue. Suddenly it appeared that it was now the first $1.25 million exemption on all broadcasters. It was not set up right from the get-go.

The third recommendation is to expand private copying to include new copying technology. As we heard eloquently from the collective, we should undertake the necessary legislative changes to update the private copying regime to reflect advances in digital copying technology.

We also recommend some reform of the Copyright Board to its operations and practices. I have that covered under a separate submission.

With regard to reducing privacy in the digital world, our cultural policies and laws must offer a practical response to piracy that better aligns how Canadians consume content and helps Canadian professional musicians and their content creators succeed in a digital global market. There are all kinds of technology out there. There are algorithms that can track the use of any song anywhere in the world. The fact that we have not utilized such technology and properly monetized the recordings for our musicians is just wrong.

Our last recommendation is with regard to Canadian content regulations. We urge the government to work with the music community to transition content quotas and the MAPL designation from an analog to a digital world. First we must regulate streaming, which will soon be a $70-billion worldwide industry, and those that produce in Canada, such as Netflix, should be subject to the collective bargaining process, such as Status of the Artist.

Thank you very much. I await your questions.

● (1000)

[*Translation*]

The Chair: Thank you.

We'll now go to Benoit Henry and Jean-Pierre Caissie, from the Alliance nationale de l'industrie musicale.

Mr. Benoit Henry (Chief Executive Officer, Alliance nationale de l'industrie musicale): Good morning.

First, thank you for the invitation to appear before you.

The Alliance nationale de l'industrie musicale (ANIM) works in francophone and Acadian communities, or, in other words, in official language minority communities.

ANIM is a small organization; I am the only employee. I am accompanied by Jean-Pierre Caissie, who is an administrator on the board.

We are certainly not copyright experts, but on the ground, we can certainly understand and see that there is a problem with artists' remuneration. We note that nations are still able to legislate and to ensure that their artists receive fair remuneration. When we look at the statistics, we see that some countries are much more generous than ours in this regard. We would like Canada to be a leader, not a laggard in this area.

I will let Mr. Caissie make the presentation.

Mr. Jean-Pierre Caissie (Administrator, Alliance nationale de l'industrie musicale): My name is Jean-Pierre Caissie. I am member of the board of directors of the Alliance nationale de l'industrie musicale, or ANIM. I am also the assistant director of the Association acadienne des artistes professionels du Nouveau-Brunswick.

It is important for artists and creators to be able to make a living from their art in Canada. The same goes for artists in the francophone and Acadian communities in minority situations in Canada. Mélanie Joly, the Minister of Canadian Heritage, is quite right to say that Canada is creative. The time has now come to support that creativity. According to Hill Strategies, a company that analyzes the data in the Labour Force Survey, the number of artists increased by 56% between 1989 and 2013. There are therefore more and more artists in Canada, including in French-Canadian communities.

These artists have access to many production tools that were not available to their predecessors. These include home recording studios, online distribution platforms, and a public that can discover their work remotely in the same way. Artists have many possibilities. Being an artist often requires investing time in related occupations such as management and communication. The number of hours spent creating is decreasing and being replaced by the management side of the career.

Let us recall that, according to the National Household Survey, the average annual income of musicians and singers was $22,770 in Canada in 2010. In New Brunswick, the average annual income of an artist is $17,562. That, by the way, is below the poverty level.

In order to be completely supported in their career development, artists need increased support from specific areas of expertise: management, recording companies, scheduling and assistance with touring, both nationally and internationally. Support, training, qualified labour, and networking opportunities are the needs identified in the Étude sur le développement des artistes et des entreprises de l'industrie de la musique au sein des communautés francophones en situation minoritaire, published in 2017, of which we will send you a copy. They are the indispensable aspects in the career development of a musical artist.

To deal more directly with the question that interests us today, remuneration models for artists and creators, we, like several of our colleagues, would like to talk about streaming. Before we address that issue, we must emphasize the importance of the royalties paid to authors and composers as a result of radio broadcasts. The royalties paid to the artists are critical for their financial health. In addition, when there are royalties, it means that the songs are being played on the radio and becoming known to a wider audience. The 2017 Communications Monitoring Report, published by the Canadian Radio-Television and Telecommunications Commission, or CRTC, reminded us of the importance of radio in the daily life of Canadians. It pointed out, in fact, that 91% of francophones listen to traditional radio. It is therefore important to maintain and even to improve the royalties paid to artists when their works are played on the radio.

With online streaming, the rates paid to the artists are significantly lower. The Copyright Board of Canada determined a rate of 0.012 ¢ per play. In the United States, the rate is about 25 times greater. We are encouraged by the fact that the government has asked the board to conduct a study. We believe that improvements are possible and we stand in support of the Coalition pour une politique musicale canadienne, which is asking the board to make decisions more quickly and for the decisions to be more in tune with rates elsewhere in the world.

In the context of streaming, the challenge of discoverability is often mentioned. This is much like finding a needle in a haystack, you may say. Maybe, but by using keywords and by understanding the algorithms better, you can hope for a greater number of plays on the platforms. Of course, we would like to be on the playlists of ministers, even the Prime Minister, but space there is limited. In reality, much of the promotional work really has to be done elsewhere, including by giving concerts and getting media coverage in local papers and on community radio. Online media do not exist in a closed world that is separated from real life. Hence the importance for musicians to use the assistance of those in the community who are doing the management and communications work, in order to do the additional tasks related to the Internet and to all the existing platforms.

For your information, I would like you to know that some Acadian artists are currently considering taking their songs off the streaming services that do not provide reasonable rates. That is sad, you may say. It runs counter to the government's wishes, as expressed in the cultural policy entitled Creative Canada, which encourages the distribution of Canadian works online. Copyright holders still have, and always will have, the right to refuse to allow their works to be used. Actually, artists in the francophone and Acadian communities want to be in cyberspace, especially on distribution platforms, but they do not want to give the impression that they are paying to develop them. Without songs, there are no streaming services.

The same goes for YouTube, which pays creators ridiculously low royalties. Remuneration categories are established according to the number of views, as you know. It is a proportional curve, which works to the disadvantage of those whose works are viewed less. It is a little as if radio paid a lower rate to artists whose works were played on the radio less often.

● (1005)

Fairness is important for us. Why is the YouTube platform not subject to the same rate as other streaming services? It operates like a radio station, especially when you consider that more than 50% of Canadians listen to music on the platform.

The private copying scheme is another way of remuneration available to creators. Their representatives here have told us that royalties are decreasing. Between 2007 and 2015, the royalties paid to artists have decreased approximately eight-fold.

In a way, the principle underlying the private copying scheme is to make sure that Canadian artists can continue to create songs, which are then used, among other things, to fill tablets and touchscreen telephones. We agree with the proposals of those representatives.

We wonder why Internet service providers, ISPs, are not subject to conditions similar to those for cable companies, which have to pay a part of their profits into independent production funds or the Canada Media Fund. These are the funds that help to finance films, broadcasts or interactive media. Why do ISPs not have the same responsibility in terms of Canadian content, so that their distribution channels can contribute to new works and distribute new songs from French-speaking Canadian artists?

We would like a new Copyright Act that would contain fewer exceptions, or, at very least, clear exceptions that would not have to be defined in court. Too many recent cases show that the exception for fair dealing in education is not clear. A number of educational institutions have found ways to use copyright-protected works in what might be classified as unfair dealing.

There are a number of legal cases. As you know, copyright management companies too often find themselves in court. We have *Canadian Copyright Licensing Agency v. York University*, and, coming soon, there will be *Copibec v. Université Laval*.

Like the Société canadienne des auteurs, compositeurs et éditeurs de musique, or SOCAN, and Ré:Sonne in music, management companies are critical for creators, both in French Canada and in the rest of Canada. If schools do not pay for the works presented in class, Canadian artists will earn even less income and will have to keep working at second or third jobs. I would not like to ask the same sacrifice from educational staff, or from other service providers in the school system.

We appreciate your work and we thank you for appreciating ours.

Thank you.

●(1010)

The Chair: Thank you.

We now start the period for questions and comments.

Ms. Dhillon, you have the floor for seven minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Madam Chair.

[*English*]

My first question is for the Canadian Federation of Musicians.

How does the Canadian copyright and remuneration system in the music industry differ from that of the United States? What is the difference between the Canadian system and the U.S. one?

Mr. Alan Willaert: With the Digital Millennium Copyright Act in the United States, primarily we have a notice and takedown system in the U.S., which is very valuable. We find that the notice and notice regime in Canada is probably not sufficient given the new types of technology and the streaming theft that occurs.

In addition, they have royalties available on digital radio. We have that as well, but the Tariff 8 stuff that we attempted to get through in Canada has not yet been approved, so we're not in a position to collect at the same levels as the U.S. is in that regard.

Ms. Anju Dhillon: Why do you think it hasn't been approved or it's taking so long? You just mentioned the technology and that they're having trouble keeping up with it. Why do you think this is the case?

Mr. Alan Willaert: I believe it's a function of the Copyright Board itself in that the decisions take way longer than they need to, and they rely on past tariffs that were in place many years ago for composers and lyricists as opposed to the new neighbouring rights regime for the musicians, performers, and labels. Part of it is the delays that take place and a reliance on old tariff models.

Ms. Anju Dhillon: Could the technology speed up here a little more?

Mr. Alan Willaert: Yes, absolutely.

Ms. Anju Dhillon: We heard in the previous hour that somebody recorded something that's bringing in maybe millions for a certain person but the person who did it only made $100. Could you explain how this could happen to Canadian artists while U.S. artists are paid for every little thing, every little royalty? Here in Canada, this is not the case.

Mr. Alan Willaert: That's not 100% true. That's a problem for artists right around the world.

One of the issues is that a certain percentage of Spotify is owned by the labels. When the labels make their catalogue available, there's a large fee involved that the streaming service has to pay to the labels in order to access that catalogue. That money is never seen by an artist, in any way, shape, or form.

Then you have the issue where recordings that were made years ago under a royalty artist deal, no matter where they were in the world, are now being played on streaming services. That distribution was never contemplated in the original royalty artist deal. It should follow the distribution that was in these royalty artist deals, which was a fifty-fifty split between the label and the artist. You would think that this would be how it would be applied in the digital realm, and of course it's not. It has been completely forgotten about.

●(1015)

Ms. Anju Dhillon: Which country would have the best model to protect our artists from this advance in technology and free online streaming? Which country, so far, has the best record for that?

Mr. Alan Willaert: Sweden had a case involving this very thing, regarding artists who sued the labels based on the fact that their model was wrong, and they were very successful. Sweden is a good example of that particular problem.

Ms. Anju Dhillon: Okay. My next question is for the Canadian Private Copying Collective.

The primary focus of this committee is to study the remuneration models for artists and creative industries. Could you describe how the artists are paid through your organization?

My second question is with regard to the new technologies and options for buying and listening to music. How are they impacting the Canadian copyright?

[*Translation*]

Ms. Lyette Bouchard: I will answer your question in French.

The first question you asked is about how artists and creators are paid through the program. Is that right?

Ms. Anju Dhillon: Yes.

Ms. Lyette Bouchard: First and foremost, royalties are determined by the Copyright Board of Canada. The royalties are paid to the Canadian Private Copying Collective by the manufacturers and importers of blank media. Then the collective redistributes them to the songwriters, the performers and the producers.

I do not want to get into all the details of the distribution, but I will say that it is essentially based on a model of selling music and listening to music on the radio and through distribution methods. Each of the companies that are members of the Canadian Private Copying Collective redistributes the royalties to companies of performers, producers and authors. Royalties are paid to performers, singer-songwriters and producers through a very specific and precise distribution method.

Ms. Anju Dhillon: Okay.

In your opinion, how can the new technology harm an artist? How can we protect our artists?

Ms. Lyette Bouchard: As I have already explained, no royalties are applied to devices such as smartphones or tablets, even though a huge number of copies are made on those devices. At the moment, royalties apply only to blank CD-ROMs, but almost none are sold anymore. People no longer make copies on blank CD-ROMs. Instead, they copy the music onto tablets and smartphones. Hundreds of millions of copies are being made.

The private copying scheme seeks to compensate and remunerate the artists. Again, I emphasize that this is not a tax; it is a royalty paid by manufacturers to those who hold the rights. The money does not go to the government, it goes to the creators. The aim is to provide some compensation for the additional copies made on the devices that, in Canada, are sold every day in their thousands.

The Chair: Thank you very much.

[*English*]

We now go to Mr. Shields, please, for seven minutes.

Mr. Martin Shields (Bow River, CPC): Thank you, Madam Chair.

I'm very much enjoying the conversation. I'm learning a lot this morning.

I have an acknowledgement to begin with; I never listen to the radio. I'm a live music performance person. I find live music or I go to look for live music, but whatever happens on a radio is a different world to me. The radio has never been turned on in my car, nor cassettes nor CDs played in it. I live in a different world; I understand that.

Do I have a playlist on a device? Absolutely, but it's usually classical music.

When you talk about the future and devices, any technology since my 12-year-old granddaughter was born is now dated. If you're looking to the future, how do you devise legislation that is going to be much more forward-thinking than what you've already said? You're trying to define legislation, but 10 years from now, everything we know now is going to be outdated.

●(1020)

Ms. Lisa Freeman: It's an excellent question and, in fact, the private copying regime as it's currently drafted comes very close to achieving that. It was the intention, but there was always also an understanding that it would be required that the government review it every five years, which is exactly the opportunity we're faced with here, to make sure that's the case.

Now, the Copyright Board of Canada shared the view of the Canadian Private Copying Collective in the early 2000s that the regime was technologically neutral enough to accommodate levies on devices—at the time, it was MP3 players. However, the courts have taken a much more restrictive view, a more restrictive and extremely conservative interpretation of the drafting of the act.

I'll take a moment to point out as well that it's much more clear in the French version of the act. In the English version there was enough room for doubt that the court said that this is a problem that Parliament needs to solve to just make sure that the regime is technologically neutral and can therefore remain flexible to accommodate whatever devices or media, any *super audio*, that might be imagined in the future. We believe it only requires a very small correction to the language to make that the case so that it can continue into the future.

Mr. Martin Shields: Will the courts interfere with that?

Ms. Lisa Freeman: We did go to the Federal Court of Appeal; that's where the Copyright Board's decision allowing the levy on MP3 players was quashed. The Supreme Court chose not to hear the case. Our understanding is that, in large part, that was because the government was about to open up the act for review, and the Federal Court's decision was quite clear that it was a problem for Parliament to fix.

Mr. Martin Shields: Okay, good.

Going to Acadian music, I guess in the history of the musicians who I know, probably all the vast majority of them have ever known is a part-time job, playing music in the evenings and playing a couple of gigs every weekend. In your experience, is that any different from the past? You're referring to that income now. Playing music in the Maritimes is great. I really enjoy the music in the Maritimes, but I've known very few full-time musicians.

[*Translation*]

Mr. Benoit Henry: A lot of artists have to earn a living elsewhere because they often have no fair and equitable remuneration. However, in the life of an artist, things do not exactly work out that way. There are creative periods during which there is generally no income for some time. Then there are periods when products are put on the market and seem to have some value. At least, that was how the former model worked. The value is clearly determined by radio stations, but also in concerts. Today, a major part of the income comes from concerts.

Music comes to Canada from the entire world. Canadians all across the country have their own music, but they are also interested in discovering music from around the world. To succeed in that, a basic minimum income is required. Artists' activities must be sufficiently marketable for them to be able to surround themselves with professionals in management and publishing. That then lets them get into national and international markets. They have to do that because basic Canadian markets are small. It is our obligation to focus on the Canadian market as a whole, but also on the international market.

Clearly, all packets of income are important, particularly those that come specifically from creating. That is what it is all about. I think you that you have certainly understood that, over the years, we have witnessed a decrease in revenue from creation. In that respect, Canada does not compare very well to a number of other countries.

●(1025)

[*English*]

The Chair: Martin, you have one minute.

Mr. Martin Shields: Just to follow it up, for the creative bands that start out and play in various community halls within 60 kilometres, is there an opportunity for them to access the international market? You hear of some YouTube performer playing, and he gets a million views, and all of sudden he's somebody else. Is that opportunity there now because of social media, which didn't exist 10 or 20 years ago?

[*Translation*]

The Chair: Could I ask you to answer the question in less than a minute, please?

Mr. Benoit Henry: There are certainly favourable opportunities.

Canadian society has access to all kinds of markets for music. There are international music markets where buyers—and therefore sellers, the artists—meet. The beauty of the thing is that, because of the technology we have available today, it is possible.

For example, 15 or 20 years ago, in order to produce a high-quality sound recording, you had to have some major infrastructure that was very expensive and not readily available. Today, you just have to have minimal equipment and you are able to put a value on your creativity. So today, artists in the francophone and Acadian communities are able to compete, in terms of creativity, with any other artist in Canada or internationally. However, they have to be given the means to do so. Which came first, the chicken or the egg? If they do not have the means, they cannot get there, but, if they are given a basic income, it becomes an investment in their own careers, and that lets them go further.

The Chair: Okay. Thank you.

[*English*]

Mr. Martin Shields: Thank you for getting me where I wanted to go.

[*Translation*]

The Chair: We now move to Mr. Nantel.

Mr. Pierre Nantel: Thank you, Madam Chair.

Thank you all for your presentations.

Of course, the Internet does provide opportunities for visibility. As you said, an unknown becomes

[*English*]

somebody else, but he remains poor. He remains poor unless he has a world market access.

[*Translation*]

Dollarama stores are full of products sold at cost, but they make a small profit because the things are sold on an international scale.

There is a problem with artists whose customer base is normally made up of the people around them, the people in their communities, say, in Quebec or Acadia, because they can never be big enough to achieve a critical mass and then to become a consumer product at an international scale. It may not be the ultimate goal of every artist to conquer the planet, but we do want to earn a living from what we create. I am talking as if I were an artist, but I am not one at all. I have no artistic talent.

Ms. Bouchard, I notice that your concern with the private copy scheme is also a concern of a number of others, including the Coalition pour la culture et les médias. I do not know if we are going to have their representatives here, but they have sent us a brief that they prepared specifically for us. Actually, they sent it to the Standing Committee on Industry, Science and Technology when it was studying copyright. It talks about the importance of adapting the private copying scheme to new technologies.

I would like to ask you about that. Everyone in my generation remembers making cassettes on which we put the songs that we liked. Then the CD-R appeared. That was wonderful because all our songs fit on it. Today, that seems to have been replaced by streaming services that we have access to. However, some people still steal music. The general impression is that music does not cost a lot. It should cost more, because the artists are poorly compensated because of the agreements to which Mr. Willaert alluded. Since it is our impression that music no longer costs a lot, we wonder who is still stealing it.

Do you subscribe to the view that, with music worth less and with plenty of it legally available, this means that even people who know the subject wonder why the private copying scheme still exists?

Ms. Freeman or Ms. Bouchard, could you tell us precisely how much more it would be for an iPad costing about $700, for example. The House of Commons paid for mine, so the amount is approximate. How much would the private copying scheme add to that in order to compensate the creators for their losses?

Ms. Lyette Bouchard: Thank you for the question.

As I was saying, surveys show that, in 2015-2016, more than two billion copies were made, and some people are still making copies on their devices. They will do stream ripping, for example, which is illegal, and make additional copies. It is those additional copies that we are talking about.

We are not interested in access to the original copy, but to the additional copies. It is important to understand that. In the English version of the act, the word used is "copy", but the French version uses "exemplaire" or "copie". There is an important distinction between access to the first copy and to additional copies. That is what the private copying scheme is after. Hundreds of millions of copies are made for personal use.

What we are asking is to be able to use just the average of what is done with devices. For example, a device costing $700 would provide a royalty of about $3. This is not a problem in Europe, I feel, because the royalty is included in the price of the iPad, iPhone, tablet or smartphone. So the consumer does not see the $3.

● (1030)

Mr. Pierre Nantel: Once again, it would be bringing us in line with international standards. Is that right?

Ms. Lyette Bouchard: Exactly.

Mr. Pierre Nantel: Mr. Willaert, you talked a lot about the fact that our legislation is a little lame compared to international standards. Could we talk a little about the idea of fair dealing in the world of copyright? We are always talking about fair dealing in the use of a work.

As you see it, is there legislation that deals with fair dealing in electricity, in wood or in anything that we do not pay for? Is it not always the creators who find themselves providing the reductions and subsidizing other activities?

[*English*]

Mr. Alan Willaert: I barely heard the question.

[*Translation*]

Mr. Pierre Nantel: That is why I speak in English all the time.

It is a problem with the electronics. I am sure that our interpreters are doing a fantastic job.

[*English*]

I'll simply say, is there any fair use of electricity that people shall not pay for because it's for education, but we do that to creators, right?

Mr. Alan Willaert: Absolutely. Within the Copyright Act now, there is the ability to copy things for personal purpose. That is sufficient, I believe, for most people. If they own the product or have purchased it, they can make copies for their own personal use. It's the sharing aspect that creates difficulties.

[*Translation*]

Mr. Pierre Nantel: Thank you very much.

I have a question for the people from the Alliance nationale de l'industrie musicale.

As I see it, your movement deserves to be better known. You are making a very daring choice in withdrawing your material from platforms because you see the compensation to be appalling. You are right. We certainly agree. Just now, Mr. Henderson said that the Spotify system was better than Google's in terms of royalties, but even those from Spotify are a real disgrace. We have to call things for what they are. It is true that the royalties you receive are appalling, and it only becomes potentially worthwhile on the international market.

Sometimes, I agree with the Minister of Canadian Heritage. I really agreed with her when we went to Paris. We went together because I felt that it was really important to go and renew Canada's commitment to cultural diversity. Today, here we are at the point of having to put some teeth in the principle in order to defend cultural diversity. Defending cultural diversity means making sure that our government sets standards so that we can invest in order to support our artists. One day, the minister also brought up the idea of geolocation criteria in the metadata of streaming services.

In your opinion, would it be worthwhile for the first product that streaming services should offer people in Acadia to be something local? At the moment, that would not be possible because you are not on them. However, I understand you.

What can we do to support you? Otherwise, your artists' music will only be copied onto CDs and cassettes.

The Chair: You have maybe 30 seconds left.

Mr. Jean-Pierre Caissie: We could talk about 8-track cassettes too, because they are in vogue again, I believe.

We are talking about discoverability, but we can also talk about Canadian quotas. Do Canadian quotas apply to services like those provided by Spotify and others, even YouTube?

These days, discoverability can work with metadata and geolocation. I believe those two can go hand-in-hand and can offer Canadian content to Canadians. I think that, since the 1970s, it has been more or less Canadian cultural policy to provide Canadians with the works of Canadian artists.

●(1035)

Mr. Pierre Nantel: How is your strike going to end up?

Mr. Jean-Pierre Caissie: I will keep you posted.

The Chair: Thank you.

[*English*]

We're now going to Julie Dzerowicz.

Ms. Julie Dzerowicz (Davenport, Lib.): Thank you very much.

There's so much here. I'm really thankful to all of you for being here today. I want to get a little bit more in terms of some of the recommendations.

Ms. Freeman, in an answer to one of my colleague's questions, you said that there was something that needed to be slightly modified. Do you know what that exact modification is that would make it equal to the French version and clarify things? Can you be more specific on that so that we can make a more definitive recommendation around it?

Ms. Lisa Freeman: Yes. In fact, we are developing—and would be happy to share with the committee if it's not too early a stage—some draft language. Essentially, the issue is that the private copying regime is focused on audio recording media in English. The court's interpretation of the term "media" excludes devices or recording media embedded in devices. Although they could understand the desire, the rationale, the logic, in doing so, they felt that word "medium" was too restrictive. Again, in French it's "*support*" which is a much broader term and could certainly be interpreted to encompass both. Again, that's the minor....

Ms. Julie Dzerowicz: That's great. If you could submit it, that would be helpful to us, for sure. Then we could be helpful around that in terms of clarifying and making recommendations.

Ms. Bouchard, you also suggested that the interim four-year fund of $40 million per year around private copying would be very helpful. If by a miracle we were able to do something within the next year, how do you see that working? How do we distribute it? Do you have any details in terms of how that might work?

[*Translation*]

Ms. Lyette Bouchard: Actually, the fund could certainly come from the spectrum auctions, for example. That was an idea put forward by the Liberals in the 2011 election. It is a solution, but it is only a temporary one. We want it to be considered, because we really feel that we need a legislative solution.

The interim fund could therefore come from spectrum auctions, for example. It would be paid to the Canadian Private Copying Collective. We would distribute the royalties in the same way as we do at the moment to the creators, meaning the artists, the performers, the producers and the songwriters.

[*English*]

Ms. Lisa Freeman: If I could just add, the Private Copying Collective is itself an umbrella collective that was created by the rights holders' collectives. In effect, it is the chosen vehicle by the rights holders. The systems that have been set up have been developed by the rights holders. As for the most efficient and fairest means of distributing any private copying royalties, the decision for that should rest with the rights holders. Our members have told us that their preference would be for any fund to flow, again, through the Private Copying Collective, as it would be the most efficient and most effective way of getting the funds into the right hands.

Ms. Julie Dzerowicz: Okay, perfect.

One of my last questions is around this section.

I, too, have been advocating with our minister to see whether there's anything we can do around the plus-70 years just to equalize it, just because we're behind. We're still at life-plus-50 years, and Europe and the U.S. are at life-plus-70 years for the copyright of musical works. My understanding is that can only be a legislative change. I kept on thinking we should just equalize it right now and then work on everything else moving forward.

To your knowledge, is there no other way we can actually equalize it in a quick way without making a legislative change?

Ms. Lyette Bouchard: I'm not sure we're the right organization to answer this question precisely. Maybe my colleagues here are.

Ms. Julie Dzerowicz: It's okay. Unless you guys have some other way, I think it's a legislative change.

Ms. Lyette Bouchard: We can check and get back to you, if you want.

Ms. Julie Dzerowicz: It's okay. For me, it was something top of mind. I have a few other questions.

We had our department officials here in our last session. They said that all the changes around remuneration are not necessarily legislative. Some of them are non-legislative things that we can actually do. They gave an example around blockchain. I wonder whether there were some other things that are outside of the legislative option that we should be looking at in terms of being more supportive around remuneration for artists. It's a general question, just to put it out there, to see whether there's anybody who has any thoughts to contribute to that.

Does anybody have any thoughts on that?

● (1040)

Ms. Lisa Freeman: Certainly everyone in the music industry is interested in blockchain and in any technology that allows greater control and greater ability for rights holders to authorize or prohibit to license to monetize their work. We at the Private Copying Collective represent something that needs to come in to clean up what can't be authorized and licensed. While there remains any quantity of uncontrollable activity, through any technology, artists should still remunerated, hence the creation internationally of the private copying regimes. But, absolutely, our member collectives are actively investigating blockchain and how that and other technologies can further their ability to license directly.

Ms. Julie Dzerowicz: Okay, thank you.

Do you have something to add, Mr. Henry?

[*Translation*]

Mr. Benoit Henry: Very generally, I would say that the legislative and regulatory framework in Canada in recent years has leaned towards consumers at the expense of creators and that we need the legislative and regulatory framework to be balanced.

[*English*]

Ms. Julie Dzerowicz: That's helpful.

Do you want to add something, Mr. Willaert?

Mr. Alan Willaert: Yes, I do.

One of the other things that is moving forward in the world is a central database. In the past when musicians made a recording, there was an IRSC code attached to it. It went nowhere. There was no way to track the musicians on those recordings from one country to another or from one company to another.

Now, the collective management organizations and their association, SCPA, which is based in Paris, have a central database that the members of SCPA can feed into and then share the data from one country to another as to who the musicians are on any given recording and who the beneficiaries are, so that they can be properly remunerated. There is progress in that regard.

Ms. Julie Dzerowicz: Perfect. That's very helpful. Thank you.

The Chair: Thank you.

That brings this meeting to an end.

[*Translation*]

My heartfelt thanks to all the witnesses, because this has been really interesting and has helped us greatly in understanding what we have to do in our study.

[*English*]

With that, I'd say this meeting is over. We're adjourned.

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